REMARKS

Claims 12, 13, 16-19, 21, and 22 are pending in the present application. By the present communication, no claims have been added, amended, or canceled. Accordingly, upon entry of the Response, claims 12, 13, 16-19, 21, and 22 will be pending.

Rejections under 35 U.S.C. § 103

Applicants respectfully traverse the rejection of Claims 12, 13, 16-19, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over JP 59-163128 in view of WO 03/016544 to Sato *et al.* (hereinafter, "Sato"; U.S. Pat. No. 7,374,915 is relied upon for translation of Sato). Applicants note that the Notice of References Cited Form PTO-892 incorrectly lists JP 59-163128 as JP 58-163128, and respectfully request correction thereof.

The Office Action alleges that JP 59-163128 discloses a method wherein an inert gas is bubbled through a liquid food product such as milk to prevent oxidation, which reduces the amount of dissolved oxygen in the product. According to the Action, the product is thereafter subjected to high temperature sterilization and packed and sealed in a bacteria free atmosphere, which keeps the oxygen dissolved in the beverage reduced.

The Office Action acknowledges that JP 59-163128 does not disclose the use of DHNA, and relies on Sato to supply this deficiency. In particular, the Action takes the position that since Sato suggests that DHNA exhibits positive effects such as alleviating abdominal effects associated with milk products, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the milk beverage of JP 59-163128. The Action concludes that because the process of JP 59-163128 dissolves an inert gas in the beverage product, the DHNA would have naturally been stabilized.

Applicants respectfully disagree and submit that such a conclusion is based on improper hindsight reasoning. While JP 59-163128 may disclose that is generally preferred to have less than 1 ppm of dissolved oxygen in a liquid food product, such disclosure is presented to prevent oxidation of the food product itself. JP 59-163128 does not disclose or suggest reducing dissolved oxygen content for any other reason. In addition, while JP 59-163128 may indicate that the disclosed methods are applicable to all liquid food products, only orange juice is exemplified. As such, JP 59-163128 is not focused on providing a product that is more readily ingested, but rather, is focused on providing a method of aseptically packaging a food product to preserve freshness and product integrity.

The Action asserts that Sato discloses a process for producing a milk beverage wherein DHNA is added because DHNA "exhibits the effects of alleviating abdominal ailments which occur upon ingestion of milk" (citing Sato, col. 5, line 24). However, Applicants respectfully submit that Sato is absolutely silent with regard to the oxidative/stability properties of DHNA, and additionally does not provide any indication that dissolved oxygen content is a factor to consider in the final milk product. As such, Sato is not focused on packaging methods to preserve freshness and/or product integrity, but rather, is focused on providing a milk product that is more readily ingested.

Further, Applicants assert that nothing in the prior art has previously recognized that the loss of DHNA can be prevented without using ill-tasting stabilizing agents by bubbling an inert gas and then subjecting the solution to a heat treatment.

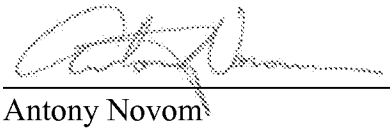
Accordingly, Applicants respectfully submit that because the problem that JP 59-163128 intends to solve and the problem that Sato intends to solve are different from each other, and therefore neither reference contains any suggestion that would motivate one of skill in the art to

combine the references to arrive at the claimed invention with a reasonable expectation of success. Withdrawal of the rejection is respectfully requested.

Conclusion

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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